

COMMONWEALTH OF MASSACHUSETTS

Labor Relations Commission

Representation Case Manual

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Commonwealth of Massachusetts
Labor Relations Commission
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1 Filing a Representation Petition (R Case)

An employee organization, an employee on behalf of other employees, or an employer may file a representation petition with the Labor Relations Commission (Commission). An employee organization files a representation petition when seeking to represent employees for the purpose of collective bargaining. See Section 1.2.2. An employee on behalf of other employees may file a representation petition seeking to decertify the incumbent employee organization by requesting that the Commission conduct an election at which employees will choose between no employee organization or continued representation by the incumbent bargaining representative. See Section 1.2.3. In addition, an employer may file a representation petition if it believes that one or more employee organizations claim to represent the employer's employees. See Section 1.2.1. When an employer or an employee organization requests the Commission to clarify or amend an existing bargaining unit, either party may file a clarification petition. See Section 8.0.

1.1 Jurisdiction

M.G.L. c.150E, §1 (the public sector collective bargaining law) and M.G.L. c.150A, §3 (the private sector collective bargaining law), identify the employees that have the right of self organization and the right to engage in lawful concerted activities for the purpose of collective bargaining or their mutual aid or protection. Under M.G.L. c. 150E, §1 (Chapter 150E), the Commission has jurisdiction over all employees “in the judicial or executive branch of government employed by a public employer, except elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the commission, and officers and employees within the departments of the state secretary, state treasurer, state auditor and attorney general.” Only appointed officials who are also managerial or confidential employees are excluded from the definition of public employee in Section 1 of Chapter 150E. City of Chicopee, 19 MLC 1765 (1993), aff’d sub nom. City of Chicopee v. Labor Relations Commission, 38 Mass. App. Ct. 1006 (1995). Although legislative branch employees are not covered by Chapter 150E, the Commission has applied the right of control test to determine whether particular employees are legislative employees. See, e.g., City of Somerville, 23 MLC 256 (1997); City of Lawrence, 13 MLC 1632 (1987).

Because the National Labor Relations Board (NLRB) has jurisdiction over most private employers, the Commission's jurisdiction over private employers under M.G.L., c.150A (Chapter 150A) is limited to those cases in which the NLRB has declined to exercise its jurisdiction. Operation and Maintenance Service, Inc., Westover Jobs Corps Center/G.E. v. Labor Relations Commission, 405 Mass. 214 (1989); Foley, Hoag

& Eliot, 2 MLC 1302 (1976); Mitrano Chevrolet, 2 MLC 1533 (1976). If there is a question about whether the Commission or the NLRB has jurisdiction, a party may file a petition with the Commission, and the Commission will notify the parties that it is holding the petition in abeyance until the NLRB decides whether to assert jurisdiction over the petition. Chapter 150A, §10. Questions of jurisdiction may be raised at any point in the processing of a representation case.

In addition to private sector parties that do not fall within the NLRB's jurisdiction, the Legislature has determined that the following employers and their employees fall under Chapter 150A, even though they are considered public employers: Massachusetts Port Authority; Massachusetts Turnpike Authority; Woods Hole, Martha's Vineyard Steamship Authority; the Massachusetts Bay Transportation Authority; and wholesale electric companies.

1.2 Filing the Petition

An original and two (2) copies of the petition must be timely filed with the Commission along with the original of a signed and dated showing of interest. See Sections 1.4 and 1.10 and 456 CMR 11.05, 14.01, 14.05, and 14.06. The petition must be signed, dated, and entirely completed, including the name and address of the petitioner, and a certification that copies were served on all other parties.

1.2.1 Employers

An employer may file a representation petition with the Commission if it believes that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit. The petition must contain the information requested in 456 CMR 14.02. If there is no recognized or certified employee organization, the Commission may permit an employee organization to intervene if it can meet either of the following criteria: 1) If it is named by the employer as one of the organizations demanding recognition; or 2) if it meets the requirements for intervening under 456 CMR 12.03. If there is no certified or recognized bargaining representative, there is no timeliness requirement for employer-initiated petitions. If there is an incumbent employee organization, normally no employer-initiated petition will be entertained during the certification year or within the recognition year. Furthermore, absent good cause, the petition must be timely filed. See Section 1.10.

1.2.2 Employee Organizations

The representation petition must include information as requested in 456 CMR 14.03 and be accompanied with a showing of interest. See Showing of Interest as described in Section 1.4. The employee organization must be in compliance with Sections 13 and 14 of Chapter 150E. See Section 1.6.

1.2.3 Employees

The representation petition must include information as requested in 456 CMR 14.04 and be accompanied with a showing of interest. See Section 1.4. If employees are seeking to decertify an incumbent employee organization claiming that it no longer has the support of a majority of the employees in the unit, the petition must be accompanied by a fifty (50) percent showing of interest stating that the employees in the bargaining unit no longer desire to have the incumbent employee organization act as their exclusive bargaining representative. 456 CMR 14.05(2). Only the employee organization, the employees petitioning, and the employer are permitted to participate in a decertification proceeding. The ballot in a decertification election asks employees to indicate whether they still desire to be represented by the incumbent employee organization or no employee organization. Other employee organizations having an interest in the same unit of employees must file a timely representation petition or await the results of the decertification vote. The election year bar will be in effect if the employees vote to decertify. See Section 1.10.3.

1.3 Commission Procedures upon Filing

All authorization cards and petitions are individually date-stamped upon receipt by the Commission. The petition is docketed and assigned a case number. The Commission's Executive Secretary examines the petition for apparent defects. If the petition is materially defective, a notice is sent to the petitioner. In those cases, a Commission agent is not assigned and no further action is taken on the case unless the defect has been corrected within the time period for filing. See Section 1.10. Defects may include an inadequate showing of interest; an incorrectly worded showing of interest; lack of jurisdiction when apparent from the face of petition, or insufficient information on the petition.

1.4 Showing of Interest—In General

The term "showing of interest" means the percentage of employees in a proposed bargaining unit or a unit deemed to be appropriate. 456 CMR 11.05. The showing of interest can be in the form of individual cards or a petition individually signed and dated by the employees, authorizing the named employee organization to represent them for the purpose of collective bargaining or seeking to decertify the incumbent employee organization. Any such cards or petitions must be signed and individually dated by employees within six months of the filing of a petition. 456 CMR 11.05. It is helpful if the name of the person is also printed so that the signature may be readily recognizable. If a sufficient showing is not filed, the Commission's Executive Secretary notifies the petitioner that it has seven (7) days to provide an additional showing of interest. However, this 7-day notice does not trigger an extension of the time for filing. If a sufficient showing of interest is not timely filed, the Commission may dismiss the petition. 456 CMR 14.05 (3).

1.4.1 Petitioner

A petitioner seeking to represent a proposed bargaining unit of employees who are not currently represented must submit a showing of interest of thirty percent (30%). 456 CMR 14.05(1). However, a petitioner seeking to represent a proposed bargaining unit of employees who are in an existing bargaining unit or to decertify the exclusive bargaining representative must submit a showing of interest of fifty percent (50%). 456 CMR 14.05(2).

1.4.2 Intervenor

Any employee organization that wishes to intervene in a pending representation case must file a Motion to Intervene within thirty (30) from the date of the Commission's Notice of Hearing and submit a ten percent (10%) showing of interest before the Commission will permit it to intervene. 456 CMR 14.05(3) and 14.18. However, if the employee organization currently represents the petitioned-for bargaining unit, it need not file a showing of interest with its Motion to Intervene. 456 CMR 14.05(3). See also, Section 1.9.

1.5 Challenging the Showing of Interest

A party may challenge the sufficiency of the showing of interest and request that it be validated. No party has the right to have the Commission check the showing of interest, and the determination of the validity of a showing of interest is an administrative matter that the parties cannot litigate. See, Duxbury School Committee, 1 MLC 1020, 1021 (1974); Commonwealth of Massachusetts, 10 MLC 1557, 1559 (1984). If the Commission is requested to check the showing of interest, it may require the employer to submit a payroll or personnel list to assist it in verifying the names and addresses of the employees identified in the showing of interest. 456 CMR 14.05(3).

1.5.1 Confidentiality of the Showing of Interest

The number of authorization cards or names on a petition and the identity of the employees who have signed cards or a petition are confidential. The showing of interest will be returned to the petitioner and intervenors immediately upon certification, or if an R case is closed or withdrawn for any reason. The Commission does not consider the showing of interest to fall within the public records statute. See, M.G.L. c. 4, §7, cl.26.

1.6 Compliance with Sections 13 and 14 of Chapter 150E

Pursuant to 456 CMR 16.05, no employee organization shall appear on the ballot unless it is in compliance with Sections 13 and 14 of Chapter 150E. 456 CMR 14.12(1). When the petition is filed, the Commission's Executive Secretary investigates whether the petitioner and the incumbent, if any, is in compliance with Sections 13 and 14. If the petitioner and/or the incumbent is not in compliance, the Commission's Executive

Secretary notifies the party who is not in compliance that it must file Forms 1 and 2. During the course of the investigation, the Commission agent continues to monitor compliance with Sections 13 and 14.

1.7 Notice of Hearing

After assignment of the case, the Commission agent schedules a hearing date approximately six weeks from the date the petition was filed. The Commission's Executive Secretary issues a Notice of Hearing to all interested parties: the petitioner, the public employer, the incumbent employee organization, if any, and any intervenors. 456 CMR 14.08. After issuance and receipt of the Notice of Hearing, any oral or written communication, including requests to postpone any R case conference or hearing, should be directed to the designated Commission agent. Parties' requests for postponement of a conference or hearing must be in writing, with notice to all other parties, and should suggest mutually agreed-upon alternative dates and times. The Commission agent may schedule a pre-hearing conference with the parties to resolve any disputed issues, to narrow the issues for hearing, and/or to execute a consent election agreement.

1.8 Initial Contact with Employer

The agent assigned to the case reviews the petition and accompanying documents and checks prior petitions and certifications involving the same bargaining unit. Approximately three (3) to five (5) days after the issuance of the Notice of Hearing, the Commission agent sends a letter to the employer requesting that the employer provide information about the following:

1. A description of the existing bargaining units
2. A list of the positions that are not included in any bargaining unit.
3. A list of all full-time and part-time positions in the proposed bargaining unit, including the number of employees in each position.
4. Current job descriptions, if any, for the positions in the proposed unit.
5. The case numbers and dates of any prior Commission elections and/or certifications in the proposed unit.
6. The name of the incumbent union, if any, that represents the employees in the proposed unit.
7. A copy of the current collective bargaining agreement between the Employer and the incumbent union, if any.
8. An explanation of any dispute the Employer may have regarding the composition of the proposed unit (e.g. confidential, managerial, casual, or supervisory employees).

The Commission agent also notifies the employer that he/she will contact the employer in approximately ten (10) to fourteen (14) days to discuss the information requested.

1.9 Incumbent Employee Organization

If the Commission agent learns that there is an incumbent employee organization, the agent notifies the incumbent employee organization that, pursuant to 456 CMR 14.18, it has thirty (30) days from the date of the Commission's Notice of Hearing to file a Motion to Intervene. The incumbent need not file a showing of interest. 456 CMR 14.05(3). If an incumbent files a Motion to Intervene, other parties to the petition have seven (7) days to file an opposition. 456 CMR 13.07. Upon the expiration of the seven-day period, the Commission decides whether to allow the Motion to Intervene and notifies the parties of its decision.

If the incumbent employee organization indicates to the Commission agent that it does not wish to intervene, the agent sends a letter to the incumbent employee organization, with copies to the employer and the petitioner, confirming that the incumbent employee organization has decided not to intervene. The failure of an incumbent employee organization to file a timely motion to intervene is treated as a disclaimer of interest in representing the employees in the petitioned-for bargaining unit and the incumbent will not be on any ballot or be considered a necessary party to any agreement for consent election. 456 CMR 14.18(1). The agent notifies the parties that the Commission will continue to process the petition without the participation of the incumbent employee organization.

1.10 Bars to a Petition

There are several kinds of bars to the processing of a representation petition: contract bar, withdrawal/disclaimer bar, election year bar, certification year bar, and recognition year bar.

1.10.1 Contract Bar

A valid collective bargaining agreement will normally act as a bar to an election for a period not to exceed three years. 456 CMR 14.06 (1) To bar an election, a contract must be reduced to writing, executed, contain terms and conditions of employment, and ratified, if, by its terms, ratification is necessary. Town of Brookline, 22 MLC 1751 (1996). A contract must be signed by all parties before a petition is filed if it is to act as a bar, even though some of the contract's terms have been put into effect. Town of Burlington, 14 MLC 1632, 1635 (1988).

Except for good cause, the Commission does not process a petition during the term of a valid collective bargaining agreement unless the petition is filed no more than one-hundred and eighty (180) days and no fewer than one hundred and fifty (150) days

prior to the termination date of the contract. 456 CMR 14.06 (1). A petition filed on the 180th day is timely if the duration clause of the existing agreement includes the language "to and including." Town of North Reading, 5 MLC 1209 (1978). Under M.G.L. c.150A, the period of time in which a petition case may be filed is no more than ninety (90) days and no less than sixty (60) days prior to the contract's expiration. Hudson Bus Lines, 4 MLC 1630, 1640-41 (1977).

1.10.2 Withdrawal/Disclaimer Bar

Except for good cause, the Commission does not process a petition in any bargaining unit or subdivision thereof, if after the approval of a consent election agreement or the close of a hearing, but before the election is held, the petitioner withdrew from a prior petition within the preceding six (6) months or disclaimed interest in continued representation of the bargaining unit within the preceding six months. 456 CMR 14.06 (2).

1.10.3 Election Year Bar

Except for good cause, the Commission does not conduct an election if an election has been conducted among the petitioned-for employees in the previous twelve (12) months. 456 CMR 14.06(3). The election year bar does not preclude the Commission from processing an election petition during the election bar period, but precludes the Commission from conducting an election within that period. City of Boston, 17 MLC 1088, 1099 (1990); City of Gardner, 1 MLC 1115 (1974).

1.10.4 Certification Year Bar

Except for good cause, the Commission does not process a petition within the twelve (12) month period after the Commission certifies a bargaining representative. 456 CMR 14.06(4). The purpose of this rule is to permit parties an opportunity to negotiate a collective bargaining agreement and to promote workplace stability. The Commission may extend the certification year if the employer fails to negotiate in good faith during the twelve (12) month period after certification. Springfield School Committee, 27 MLC 20 (2000); Commonwealth of Massachusetts, 17 MLC 1650 (1991).

1.10.5 Recognition Year Bar

Except for good cause, the Commission does not process a petition for any existing bargaining unit for which a recognition agreement has been executed in the preceding twelve (12) months. The recognition agreement must comply with the provisions of 456 CMR 14.06 (5). See also, 456 CMR 11.04.

1.11 Deferral to AFL-CIO "no raiding" Procedure

If an employee organization affiliated with the AFL-CIO petitions to represent a bargaining unit currently represented by another employee organization affiliated with the AFL-CIO, any party may request the Commission to defer processing of the petition for thirty (30) days to permit the employee organizations to pursue the settlement provisions of the AFL-CIO "no-raiding" procedure. 456 CMR 14.17

1.12 Blocking Charges

Any party to a representation petition may file a motion requesting that a pending prohibited practice charge block an election. 456 CMR 15.12. Except for good cause, the party requesting the Commission to treat a pending prohibited labor practice charge as a blocking charge must submit sufficient evidence to permit the Commission to find probable cause to believe that the conduct alleged in the prohibited practice charge: 1) occurred; 2) violated M.G.L. c. 150E or c. 150A; and 3) the alleged unlawful conduct may interfere with the conduct of a valid election. 456 CMR 15.12(1). See also, Commonwealth of Massachusetts, 21 MLC 1713 (1995). The Commission may investigate the request, issue a notice to the other parties to show cause why the request should not be granted, and/or conduct further proceedings to dispose of the matter. 456 CMR 15.12(2).

If the Commission finds probable cause to believe that a prohibited practice has occurred that may interfere with the conduct of a valid election, the representation case will be held in inactive status, subject to being reactivated after the prohibited practice charge is resolved. See, Commonwealth of Massachusetts, 17 MLC 1650 (1991). If the prohibited practice charge is dismissed or otherwise resolved without a remedy that the employer bargain with an incumbent union, the petitioner may file a request that the Commission reactivate the representation petition. However, if the prohibited labor practice charge results in a Commission order or a settlement agreement requiring the employer to bargain with the incumbent union, the Commission will dismiss the representation petition, Commonwealth of Massachusetts, 17 MLC 1659-1660, and may also impose a time period during which no representation petition can be filed. Springfield School Committee, 27 MLC 20 (2000).

The Commission has followed the criteria established by the National Labor Relations Board for determining whether the conduct alleged in a prohibited labor practice charge might interfere with a valid election under 456 CMR 14.12(1)(c). Commonwealth of Massachusetts, 21 MLC 1713, 1717 (1995). Those criteria are as follows: 1)the character and scope of the charge and its tendency to impair the employees' free choice; 2)the size of the working force and the number of employees involved in the events on which the charge is based; 3)the entitlement and interest of the employees in an expeditious expression of their preference for representation; 4)the relationship of the charging parties to labor organizations involved in the representation

case; and 5) the showing of interest, if any presented in the representation case by the charging party; and the timing of the charge.

1.13 Consent Election Agreements

Absent any dispute or other impediment to conducting an election, the Commission agent prepares a consent election agreement for the parties to execute. See 456 CMR 14.11. The agreement generally includes the following information: 1) The full and correct names of the parties involved, as well as the manner in which the parties wish to be designated on the ballot; 2) A complete and accurate description of the bargaining unit including details of the election about which the parties have agreed. For example, the agreement may include the election site, the polling hours, the date and day of the election, the order in which the parties will appear on the ballot, the date that employees must be on the payroll in order to be eligible to vote, the date for receiving the election eligibility list, and any other pertinent information necessary to draft the Notice of Election, prepare the ballots and/or conduct the election. If the agreement does not include the time, date, and hours of the election, this information will be determined prior to the preparation of the Notice of Election.

1.14 Hearing

If the parties are unable to agree to a consent election, the Commission conducts an investigatory hearing to resolve any disputed issues. 456 CMR 14.08 and 14.09. After the hearing, the Commission decides whether to dismiss the petition or to direct an election in an appropriate unit. 456 CMR 14.10. The hearing in a representation proceeding is investigatory in nature and does not require that the Commission hearing officer make recommended findings of facts. 456 CMR 14.08(4).

2 Preparing for the Election

Except in those cases where an employer recognizes an employee organization, secret ballot elections resolve questions concerning the representation of employees for the purpose of collective bargaining. Usually, the election is conducted at or near the work location of the employees. In certain circumstances when it may be impractical to conduct an on-site election, the Commission conducts a mail ballot election. See Section 4.0

2.1 Designation of Organizations on the Ballot

The name of the employee organization(s) on the ballot is the name designated by the employee organization on its petition unless the employee organization wishes to appear on the ballot with a shortened designation so long as the shortened designation does not confuse or mislead the voters. For example, the American Federation of State, County, and Municipal Employees may want to appear on the ballot as AFSCME.

2.2 Order of Choices on the Ballot

The parties determine the order of the choices on the ballot. If the parties cannot agree, a coin toss or random drawing will decide the placement on the ballot. The incumbent is not entitled to the left side of the ballot or any other preference. The order of the choices on the ballot cannot be litigated.

2.3 Form of Ballot

Under the letterhead of the Commission, the ballot sets forth the voter's choices. It also notifies the employee that he/she should not sign the ballot and that any signed ballot or ballot marked to indicate the identity of the voter is VOID.

2.4 Ballots for Professional Employees (Globe Ballots)

M.G.L. c. 150E, §3 provides that professional employees have the right to vote to be included in a unit of non-professional employees or to be represented in a separate unit. If there are professional and non-professional employees included in the same unit, a special ballot must be prepared for the professional employees asking them: 1) whether they wish to be included in the unit of non-professional employees; and 2) whether they wish to be represented by **(name of employee organization)** for the purpose of collective bargaining. See, Globe Machine & Stamping Co., 3 NLRB 294 (1937). If the majority of the professional employees vote to be included with the non-professional employees, their ballots are counted with the non-professionals. If a majority of the professional employees vote not to be included in a bargaining unit with non-professional employees, their votes are counted separately.

2.5 Withdrawal from Ballot

Until the printing of the ballot and the posting of the election notice, the Commission permits an employee organization to withdraw from the ballot. Any employee organization seeking to withdraw from the ballot must give timely notice in writing and disclaim interest in continuing to represent the petitioned-for bargaining unit. 456 CMR 14.12(1).

2.5.1 Petitioner

If the petitioner seeks to withdraw from the ballot and there is no intervenor, the Commission allows the petitioner's request and cancels the election. However, if the petitioner withdraws, the Commission will not entertain any petition for the same unit or any part thereof for a period of up six (6) months. See 456 CMR 14.06 (2). See also Section 1.10.2. If the petitioner seeks to withdraw and there are one or more intervenors, in order for the election to be held, one of the intervenors must have either a thirty (30) or fifty (50) percent showing of interest, depending on whether there is an incumbent employee organization, in order to hold an election. See Section 1.4.1 and

456 CMR 14.05(1) and (2). Thus, if the petitioner withdraws, each intervening organization will be given ten (10) days to submit a showing of interest sufficient to reach thirty (30) or fifty (50) percent. If one of the intervenors has already submitted a sufficient showing of interest, the case may continue uninterrupted.

2.5.2 Intervenor

In determining whether to allow an intervenor to withdraw, the Commission considers whether a late withdrawal will confuse the voters. If the withdrawal is allowed, the Commission's agent at the election site will advise the voters of the change prior to their voting.

2.6 Non-English Speaking Voters

In any election where there are substantial numbers of non-English speaking voters, ballots and Notices of Election, the Commission may prepare ballots in multiple languages. Additional time will be allowed in setting up such elections to enable the Commission to obtain accurate translations.

3 On-Site Elections

3.1 Election Hours

The Commission generally schedules on-site elections and does not permit absentee ballots. The voting hours (during, before, or after working hours) are arranged so that all eligible employees on all shifts and at all locations have an adequate opportunity to vote. If there is **one shift** and all employees work the same hours, the voting time is scheduled to allow employees to vote at the start or close of the workday, or on a lunch break. If there are **two shifts**, the most convenient method is to open the polls over a period that will straddle the shifts. Thus, if the first shift is 7 am - 3 p.m. and the second is 3 p.m. - 11 p.m., the polls may be open from 2:30 to 3:30 p.m.. If there are **three shifts**, the voting times straddle any two of the three shifts in the same manner as the two-shift example.

3.2 Election Date

The ideal date of an election is a day that maximizes participation of the employees and minimizes operational considerations of the employer. Thus elections for school personnel are not scheduled when school is not in session. Days preceding or following a holiday are also avoided. The selected date allows for at least ten (10) days for the Commission's Notice to Employees to be posted so that employees have sufficient notice of the time, date, and location of the election. See Section 3.6.

3.3 Eligibility Cut-Off Date

The parties agree on a date that employees must be on the payroll of the employer if they are to be entitled to vote. Usually, this date will be the last day of the payroll period immediately preceding the execution of the consent agreement, or the issuance of the direction of election. If the parties agree, other dates may be selected, but the Commission will not approve a cut-off date that operates to disenfranchise substantial numbers of voters.

3.4 Voter Eligibility List

Prior to an election, the Commission directs or orders the employer to provide to the Commission and the parties to the election an alphabetical list of the names and addresses of employees within the bargaining unit. The production of this list is to ensure that all parties have an opportunity to communicate with voters prior to the election. Unless the parties agree otherwise, the date for submission of the list is fourteen (14) days after the execution of the consent agreement or fourteen (14) days after the issuance of a direction of election. The employer's failure to timely produce an accurate voter eligibility list may be grounds for setting aside an election. City of Springfield, 14 MLC 1010 (1987).

3.5 Pre-Election Disputes About the Eligibility List

If, prior to the election, any party disputes the accuracy of the eligibility list, the Commission agent contacts the employer to resolve any disputes. If the disputes cannot be resolved prior to the election, the party disputing the list has the right to file post-election objections based on the eligibility list. If the eligibility list is modified prior to election, each party is served with the updated list. If there is insufficient time for the parties to agree to adding names to the eligibility list, the potentially-eligible voters may appear at the election and vote by challenged ballot and the issue will be resolved after the balloting is concluded. See Section 3.17.

3.6 Election Notice

The Notice of Election informs potential voters of the time, date, and location(s) of the election, the conditions under which it will be conducted, and a description of the bargaining unit. Notices are posted for as long as possible, usually ten (10) days preceding the election, to promote maximum communication of this essential information. Attached to the Notice of Election is a sample ballot showing the question and choice(s). To avoid problems, actual ballots are a different color than the sample. The Commission requests that the employer post Notices of Election in the normal and usual places where notices or information for employees are posted.

3.6.1 Amended Notice of Election

In case of an error in a Notice of Election, or a modification in the terms and conditions of the election, if time permits, an amended Notice of Election is drafted and posted. For example, this may occur if one or more parties on the ballot withdraws (See Section 2.5), or there is a modification of the unit description, of the voting hours, or the voting site.

3.7 Multiple Polling Sites

In any election where it is necessary to have more than one polling site, the Commission's procedures are as follows:

Voters may cast their ballots once, in only one of the sites. The Commission requests the employer to prepare the eligibility lists with the names and addresses of eligible voters for each specific site.

The Notice of Election informs voters at which site they should cast their ballots.

If voters appear at the wrong location, they will be permitted to vote under challenge. The Commission agent challenges the voter because his/her name is not on the eligibility list for that location. See Section 3.17.1. In arranging an election with multiple polling sites, in determining the election hours, the Commission considers the number of available Commission agents to conduct the election and the travelling time between sites.

3.8 Observers

Generally, the Commission permits the parties to select their observer without restrictions. However, the Commission discourages the employer from selecting supervisory or managerial personnel who may intimidate the employees. If the employer insists on its choice for observer, the election proceeds, but the Commission agent advises the employer that its observer may constitute grounds for objections to the election.

3.9 Pre-Election Campaign Propaganda

In the absence of the filing of a prohibited practice charge, the Commission does not censor pre-election campaign propaganda and does not give advice or opinions about the validity of certain conduct. Investigation of pre-election abuses will not take place unless they involve abuses of the Commission's process, or a prohibited practice charge is filed.

3.10 Responsibilities of Commission Agents

It is the sole responsibility of the Commission agent-in-charge to conduct and oversee the election. Except in an emergency, the responsibility may not be delegated

to the parties, observers, or any other Commission personnel. The agent-in-charge has full authority to direct all Commission personnel and also has the authority to:

- a) maintain order and laboratory conditions at the election site;
- b) instruct observers;
- c) preserve the secrecy of the voting process;
- d) attempt voluntary resolution of disputes;
- e) direct removal of unruly observers and voters; and
- f) open and close the polls and also change conditions of the election should the need arise.

3.11 Pre-Election Conference

The Commission agent usually arrives at least one-half hour prior to the opening of the polls to inspect the polling area to ensure that laboratory conditions will be maintained throughout the conduct of the election. The agent also meets with the parties and their observers to check for changes in the voting list, instruct the parties and answer any questions, set up the voting booths, and seal the ballot box. The agent may ask the parties or their observers whether they anticipate any challenges to the voter eligibility list and may attempt to resolve them before the election.

3.12 Setting Up the Election Site

The polling area is set up to protect the objectives of ballot security and secrecy. The Commission's voting booths are used so that the voter may mark his/her ballot in secrecy. Ideally the voting area should be one where access may easily be controlled. In determining the location of voting booths, check off tables, and entrances and exits from the voting area, the Commission agent tries to avoid any situations where voters who have voted pass by those waiting to vote. Observers whose function is to identify voters and check them off on the eligibility list are seated with the Commission agent in an area where the voters must pass in order to vote.

3.13 Role of the Observers

Commission agents and observers wear identifying badges. Each observer is given a copy of the Commission's Instructions for Observers, and the agent will explain the general scope of these requirements. Observers are instructed NOT TO COMMUNICATE DIRECTLY WITH VOTERS and NOT TO ELECTIONEER IN THE IMMEDIATE AREA OF THE POLLS. All challenges are directed to the Commission agents. See Section 3.17. The observers may bring a list of voters they will challenge, but this is the only document, other than the Commission's official voting list, that may

be used to check off voters. The observers are instructed that the voting list **WILL NOT** leave the table at any time and will be collected at the conclusion of the election.

3.14 Opening the Polls

Prior to the opening of the polls, the Commission agent tries to have the parties agree which clock or watch will be the official timepiece. If no agreement can be reached, the agent selects a clock or watch as the official timepiece. Voters may be permitted to line up in an orderly fashion prior to the opening of the polls. Voters will be reminded to have their identification ready to show to the Commission agent. At the appointed time, according to the official timepiece, the agent announces that the polls are open and asks all unauthorized persons to leave.

3.14.1 Late Opening of the Polls

If the polls open later than the scheduled polling time, the Commission agent notes the time and whether any voters have left the polling area due to the delay. The agent should write a statement explaining the reason(s) for the late opening of the polls and have the observers sign it. Unless the parties stipulate in writing, the closing time is not extended because of the late opening of the polls. See Section 3.21.

3.15 Electioneering

The Commission agent removes all campaign literature from the polling area. No electioneering is permitted in the voting area during voting hours, including conversations between voters or between the observers and the voters. Observers may not wear any kind of button or insignia that relates to the representation procedure.

3.16 Conduct of the Polling

As voters approach the check off table, the Commission agent, **NOT THE OBSERVERS**, will ask the voter for his or her name and for some identification. The observers are entitled to inspect identifying material if they desire. If there is no question of eligibility, the observers for each party may check off the voter's name on their copies of the eligibility list. The Commission agent then hands the voter a ballot.

3.16.1 Instructions to the Voter

If the voter is not challenged, the Commission agent, **NOT THE OBSERVERS**, will instruct him/her on voting procedures. Normally this will be a matter of directing the voters to the voting booth, instructing them that they may indicate their preference for any choice on the ballot, and that, after marking their ballot, to fold it and drop it in the ballot box.

3.16.2 Spoiled Ballots

In the event that a voter mismarks his/her ballot, the ballot contains instructions that the ballot should be returned to the Commission agent for a new ballot. The Commission agent will destroy the "spoiled" ballot in the presence of the observers.

3.17 Challenged Ballots

The Commission agent or an observer for any party may challenge the eligibility of any voter. All challenges should be directed to the Commission agent. 456 CMR 14.12(2).

3.17.1 Challenges by the Commission

The Commission agent challenges any voter whose name does not appear on the eligibility list but who appears at the polls to vote. Town of Whitman, 16 MLC 1248 (1989). The agent may not make challenges for the parties.

3.17.2 Challenges by the Parties

Observers seeking to challenge the eligibility of a voter must do so at the time the person's name is announced and the voter receives a ballot. No challenge will be accepted after the ballot is cast, or once the polls are closed. See, City of Springfield, 24 MLC 109 (1998). The reason for the challenge should be stated when the challenge is made and marked on the challenge ballot envelope by the Commission agent. A party who fails to make challenges at the proper time cannot remedy its oversight by raising the challenge as an objection to the election.

3.17.3 Challenge Ballot Procedure

When a voter is challenged, the Commission agent will note on the challenge ballot envelope the job title, work location, and reason for the challenge. The name of the challenged voter will be noted on the Commission's official copy of the eligibility list. The agent will inform the voter that: 1) one of more of the parties to the election has challenged his/her eligibility; 2) his/her ballot will be placed in an envelope having a perforated stub; 3) if counting the challenged ballots is necessary to determine the outcome of the election, the information on the stub will be used to determine eligibility; 4) if the voter is eligible, the stub will be torn off, and the ballot will be mingled with those of other voters in order to maintain the secrecy of the voter's choice; and 5) if it is found that the voter is not eligible, the ballot will be destroyed unopened. The Commission agent then gives the voter a ballot and a challenge envelope and directs the voter to go to the voting booth, mark his/her ballot, fold the ballot, insert it in the long part of the envelope, seal the envelope, and drop it in the ballot box.

3.18 Security of the Ballots

All ballots remain in the possession of the Commission agent at all times. The agents are the only persons who may handle blank ballots. All voters must place their ballot in the ballot box themselves. When there is more than one polling time or more than one polling site, the Commission agent will secure the ballots by: 1) sealing the ballot box with tape and having each of the parties present sign across the tape; 2) sealing the blank ballots in the election envelope; and 3) taking the sealed ballot box and sealed election envelope and maintaining it in his/her possession at all times.

3.19 Language Problems During Voting

To the extent that translation services are needed, the Commission agent will instruct the translator to read only the information on the ballot, and, if necessary, the Notice of Election to the voter. However, the translator will not be permitted to accompany the voter to the voting booth or to mark the ballot for the voter.

3.20 Disabled Voters

If a voter is disabled and is unable to vote without assistance, he or she may be permitted to have someone accompany them to the voting booth and assist them if necessary. If a disabled voter needs assistance and does not have someone to accompany them to the voting booth, the Commission agent may assist the disabled voter after notifying the observers. However, neither the parties nor their observers will be allowed to assist a voter to mark the ballot.

3.21 Closing of the Polls

The Commission agent will notify the observers a few minutes prior to the close of the polls of the amount of time remaining for voting and, that all persons currently in line will have the opportunity to vote. The agent will close the polls early if all eligible voters have cast a ballot and the parties consent in writing. The agent closes the polls by announcing "The polls are closed." A late start for the election will not extend the time for voting, unless the parties stipulate in writing to extend the hours of the election. After the agent has announced the end of the polling time, the Commission agent will:

1. If the ballots are not counted on-site, the secure and seal the ballot box in the presence of the observers.
2. Request the observers for all parties to sign the Certification of Conduct of Election.
3. If there are challenged ballots, the agent will attempt to get a written agreement from the parties resolving the challenges prior to opening the ballot box. A party may withdraw any challenge before the ballots are counted.

4. Explain the ballot tabulation procedure.

3.22 Ballot Tabulation

After all attempts to resolve the challenges have been exhausted, the tallying process will begin.

3.22.1 Preparation for Ballot Tabulation

If the election has been run at multiple polling sites or times, the Commission agent does not begin the ballot tabulation until all ballot boxes have arrived. The agent has all parties inspect the tape covering the ballot box to ensure that the seals are not broken. After inspection, the agent opens the ballot boxes and separates the challenged ballot envelopes from the other ballots. Any resolved challenges will be opened and intermingled with the other ballots.

3.22.2 Observers

At the counting of the ballots, each party will be permitted one observer. If the Commission agent permits, spectators may observe the tabulation of the ballots from a reasonable distance, out of the immediate area.

3.22.3 Tabulation Process

The ballots are arranged in blocks of 50 ballots each and numbered sequentially. The Commission agent recounts the ballots in the block to ensure that there are 50. After a block is counted, each ballot will be turned over, examined by the agent, and called for one of the choices on the ballot, or called “blank” or “void.” The intent of the voter must be clearly evident. If the Commission agent cannot identify or determine the intent of the voter, the agent declares the ballot void. As the call is made, the agent will lay the ballot on the count table face up and allow sufficient time for the observers to see how it is marked. The parties may protest the agent's ballot call. See Section 3.22.5.

3.22.4 Tabulation in Special Elections

In an election consisting of two questions, such as the Globe ballot election for professional employees (See Section 2.4), the self-determination question will be counted first. Ballots with two questions will be separated from those with a single question. If the Commission simultaneously conducts an election for two separate bargaining units, the ballots for each unit are different colors. The agent will sort the ballots by color, with the ballots face down, and then count them.

3.22.5 Protested Ballots

Only the Commission agent will be responsible for calling the ballot. The agent determines the intent of the voter and calls out the voter's choice. One designated observer from each party is permitted to observe the count and protest any call of the Commission agent. If an observer believes that the intent of the voter has been incorrectly interpreted, the observer may protest. The back of the ballot will be "stamped" or marked with the following information: 1) the name of the party protesting the ballot; 2) the reason for the protest; 3) the choice for which the ballot was called; 4) the choice for which the protesting party wants the ballot called; and 5) the number of the block of ballots from which the ballot came. The protested ballot will then be set aside and the agent makes the tally sheet with the choice called by the agent and a notation that the ballot is protested.

3.22.6 Official Tally of Ballots

After the tabulation process has been completed, the chief representative of each of the parties signs the Official Tally of Ballots. The Commission agent retains the original and provides a copy to each party. To be certified as the exclusive bargaining representative, an employee organization must receive a majority of the valid votes cast in an election. If the results of the election are determinative and not affected by challenged or protested ballots, the ballots will be sealed in an envelope containing the case name and number, the date of the election, and the tally. If challenges and protests are sufficient to affect the outcome of the election, these ballots will be segregated and placed in a sealed envelope along with all copies of the eligibility list used at the election.

4 Mail-Ballot Elections

In some cases, the Commission may determine that a mail ballot election is more appropriate than an on-site election. The procedures in a mail ballot election differ from an on-site election. Upon receipt from the post office, the Commission segregates and holds all mail ballots in a secured and locked location until the day of the ballot count. In some cases, the Commission may require the employer to provide the voter eligibility list in an electronic format or provide mailing labels.

4.1 Mailing Process

1. Ballot and Instructions. Each envelope will include a ballot and instructions to the voter. The label on the reverse side of the return envelope will also contain a code to help identify the voter and expedite the verification process.
2. Mailing Period. At least 2-1/2 weeks will be allotted for the voters to receive and return their ballots. This permits an adequate time for delivery and return of initial, as well as secondary ballots.

3. Phone Calls. At least one Commission employee will be available to answer phone calls about the election at the time designated on the Notice of Election.
4. Color-Coded Lists. Employees who call the Commission to report that they have not received a ballot will be placed on color-coded lists (with corresponding mailing labels). The callers' names, addresses, and I.D. #'s (if applicable) will be recorded.

Different color codes will be used to distinguish between:

1. Employees who are on the eligibility list but who did not receive a ballot, or whose ballot was destroyed and...
2. Individuals who are not on the eligibility list, but who believe that they are eligible to vote.

At the end of each day, ballots will be sent to the people on each list, with a copy of the names sent to the parties.

4.2 Undeliverable Ballots

The Commission may receive "undeliverable" ballots returned from the post office. Undeliverable are those ballots returned due to a change of address or name, or where the address is incorrect? A Commission agent will contact the parties to obtain the correct information and new ballots will be sent immediately to those individuals whose ballots have been returned, using color-coded typing labels, along with the persons code number.

4.3 Instructions to the Parties

Approximately half way through the mailing period, each party will receive written instructions for the day of the count. These instructions notify the parties of the date and time the Commission agent will begin the ballots tabulation, and explain how the ballots are verified, sorted and counted; and how many observers each party may have. The parties should submit the names of the observers to the Commission agent in writing.

4.4 Ballot Tabulation

4.4.1 Sorting

Using a numerical code, the ballots are sorted at the counting tables.

4.4.2 Verification

Each envelope is checked for a signature that matches the name on the label. Any challenged vote is set aside. Every color-coded ballot is automatically challenged by the Commission agent. In the event both the original and duplicate ballots are received, only the ballot the Commission sent first will be counted. If two ballots are returned in one envelope, both ballots will be challenged. If the parties agree, one will be counted, provided the secrecy of the ballot is maintained. Duplicate ballots that are not counted will not be entered in the tally as challenged or voided ballots, but preserved for display to the parties as duplicates. The stubs of the envelope or postmark will be returned and attached to the duplicate ballot. All envelopes without signatures are void. An envelope with a signature different from the mailing label is acceptable provided the name is not substantially different (i.e., Jack Douglas, signed, although label reads John Douglas). Any ballot that identifies the voter is void.

4.4.3 Tabulation Process

The verified envelopes are mixed after the signature and label sections have been torn off. The envelopes are slit and the ballots are placed faced down in blocks of 50. The ballots are tabulated. The intent of the voter must be clearly evident. The parties may protest any ballot where the intent is unclear. If the Commission agent cannot identify the intent of the voter, the agent declares the ballot void. The tallies are placed on sheets in the blocks of 50. The final result is announced upon completion.

5 Post-Election Procedures

There are three kinds of post election issues that may determine the outcome of the election: 1) protested ballots; 2) challenged ballots; and 3) objections to the conduct of the election or to campaign conduct affecting the outcome of the election.

5.1 Protested Ballots

If protested ballots were not resolved at the time of the counting of the ballots and will determine the outcome of the election, the Commission schedules a conference with the parties as soon as possible after the election. At the conference, the protested ballots will be opened and numbered with copies given to all of the parties. The parties are allowed seven (7) days to submit a statement of position about the protested ballots. If objections and challenges are also pending, the time for submission of the parties' positions may be extended until the close of the investigation into those matters. After the parties' positions are received, the Commission will decide whether any of the protested ballots should be counted.

5.2 Challenged Ballots

If the number of challenged ballots is sufficient to determine the outcome of the election, within seven (7) days after the tally of the ballots, each party must file a position statement with the Commission concerning the eligibility of each challenged voter. 456 CMR 14.12 (2). The Commission will review the consent agreement or direction of election, the notice of election, and the parties' position statements to decide whether to reject the challenged ballots or schedule a hearing. If any challenge presents no factual dispute, is frivolous, or has already been determined by the Commission, the challenge will be denied without a hearing, and the ballot counted if required to determine the outcome of the election. If the challenge is clearly valid, as determined by the election documents or prior decision, the challenge will be allowed without a hearing and the ballot will be destroyed unopened.

5.2.1 Standard for Eligibility

An employee who has a reasonable expectation of continued employment on the eligibility cutoff date set forth in the consent election agreement or direction of election is eligible to vote. This includes employees who were ill, on vacation, or temporarily laid off. Employees who have quit or been discharged for cause prior to the election date are not eligible to vote.

5.3 Objections to the Election

Objections are complaints by one or more of the parties that a Commission agent or one of the other parties to the election has engaged in conduct that has prevented a fair election. Within seven (7) days after the tally of the ballots, any party to an election may file objections to the conduct of the election or to conduct affecting the result of the election. 456 CMR 14.12(3) The objections must include a statement that identifies with particularity the conduct the objecting party alleges to be objectionable, including the nature of the conduct, the identity of persons involved, and the date, time, and place of the alleged conduct. 456 CMR 14.12(3). Requests to amend objections must conform to the evidence and may not raise additional allegations. If another party objects to a requested amendment, the Commission must rule on whether to allow the amendment.

5.3.1 Objections - Investigation - Hearing

Upon receipt of the objections and other parties' responses to the objections, the Commission determines whether the objections merit further proceedings. 456 CMR 14.12(3). The Commission may dismiss some or all of the objections if it does not find probable cause to believe that the alleged conduct occurred or that the alleged conduct materially interfered either with the conduct of the election or with the results of the election. 456 CMR 14.12(3). If the Commission concludes probable cause exists, it will investigate further or schedule a hearing. If there are undisputed material facts, the Commission may issue a decision without further fact-finding. 456 CMR 14.12(3).

See, e.g., City of Springfield, 14 MLC 1010, 1013 (1987). If, after hearing, the Commission finds that the objections have merit, it will set aside the results of the election and direct that the election be re-run. However, if the Commission concludes that the objections are without merit, it will issue a Certification of the Results of the Election.

5.3.2 Examples of Objectionable Campaign Conduct

1. Inaccurate eligibility lists. If a voter eligibility list contains enough inaccurate names and addresses or omits enough names and addresses, thereby interfering with the ability of the parties to an election to communicate with the voters, the Commission may set aside the election. City of Springfield, 24 MLC 109 (1998); City of Springfield, 14 MLC 1010, 1013 (1987); Commonwealth of Massachusetts, 9 MLC 1842 (1983). However, the Commission has declined to set aside an election absent evidence that an inaccurate voter list worked to the advantage or disadvantage of any party to the election. City of Springfield, 24 MLC 109 (1998); Commonwealth of Massachusetts, 7 MLC at 1306.

2. Facsimile Ballots. The Commission will set aside an election if a party has distributed a facsimile ballot that could have led voters to believe that the Commission endorsed one party to the election over another. See, e.g., Town of Barnstable, 15 MLC 1069 (1989); Commonwealth of Massachusetts (Unit 7), 10 MLC 1053 (1983); Commonwealth of Massachusetts (Unit 1), 7 MLC at 1294 (1980); Commonwealth of Massachusetts (Unit 4), 2 MLC 1261 (1974).

3. Misrepresentations. The Commission will overturn an election based on misrepresentations by a party during the campaign if: 1) a party has misrepresented a highly material fact of which only the party making the misrepresentation knows the truth; 2) the voters have no independent knowledge or intelligence with which to evaluate the misrepresentation; 3) the timing or nature of the misrepresentation precludes an effective response by another party; and 4) the misrepresentation had a substantial impact on the outcome of the election. See, e.g., Commonwealth of Massachusetts, 22 MLC 1569, 1604 (1996); Commonwealth of Massachusetts, 16 MLC 1293, 1303 (1989); Boston Water and Sewer Commission, 13 MLC 1071, 1073-74 (1986); Commonwealth of Massachusetts (Unit 5), 3 MLC 1067, 1071 (1976).

4. Denial of Access. The Commission may set aside an election if an employer has unduly restricted a union access to employees during the election campaign. See, e.g., Commonwealth of Massachusetts (Unit 7), 9 MLC 1842, 1848 (1983).

5. Conduct of Election. The Commission may set aside an election if there has been sustained conversations or campaigning in the polling area that could have affected how employees voted. See, e.g., Commonwealth of Massachusetts, 16 MLC 1292, 1307 (1989); Boston Water and Sewer Commission, 13 MLC 1072 (1986); Vinfen Corporation, 11 MLC 1481 (1985). In addition, the Commission may set aside

an election if the conduct of the Commission agent has violated the neutrality of the election, disenfranchised a substantial number of voters; or failed to maintain the secrecy or security of the ballots.

6 Runoff Elections

6.1 When Required

When there are three or more choices on the ballot and none of the choices on the ballot receives a majority of the valid votes cast, a runoff election is required. The Commission does not conduct a runoff election while objections to the election are pending. 456 CMR 14.13(1). The Commission does not conduct a second runoff election absent evidence that it would produce different results. 456 CMR 14.13(1).

6.2 Voter Eligibility

Unless the Commission determines otherwise, employees who were eligible to vote in the initial election are eligible to vote in the runoff election. 456 CMR 14.13(2).

6.3 Ballots

The two choices on the ballot that received the highest total of votes in the original election are on the ballot for the run-off, whether those choices were employee organizations or no union. 456 CMR 14.12(3).

6.4 Scheduling

A runoff election is held as soon as possible after the first polling, but is not scheduled during the seven-day period during which a party may file objections to the conduct of the election. Usually, runoff elections are conducted at the same location and during the same hours as the original election.

7 Re-Run Elections

7.1 When Required

The Commission may conduct a re-run election when:

1. There were two or more choices for employee organizations on the ballot and the votes were equally divided among the employee organizations.;
2. The number of ballots cast for one choice equals the number for another choice but less than the number for a third choice (which did not receive a majority of valid votes cast);
3. The vote tally following a runoff election was equally divided between two employee organizations; and

4. The Commission has set aside an election because of objectionable conduct.
456 CMR 14.14(1).

Any employee organization on the ballot of a re-run election must receive a majority of the votes cast to be certified. A re-run election may result in a subsequent runoff election.

7.2 Eligibility Cut- Off Date

The eligibility cut-off date for the re-run election is specified in the Direction of Election and is usually the last day of the payroll period that precedes the issuance date of the Direction of Election.

7.3 Voter Eligibility

A new eligibility list is required for the re-run election.

7.4 Election Notice

If a re-run election is the result of objectionable conduct by one of the parties, the Commission, at its discretion, may or may not indicate this fact in the Notice of Election.

7.5 Run-off and Re-run Elections Procedures

Election and tabulation procedures for a re-run election are the same as for any other election. See Sections 3 and 4. Objections may be filed, following the same standards and procedures for a regular election, for either a run-off or re-run election. See Section 5.3.

8 Clarification/Amendment Petitions (CAS)

8.1 In General

A party to an existing bargaining relationship may file a petition with the Commission seeking to clarify or amend an existing bargaining unit or a Commission certification. The information that an employer or employee organization must include in a CAS petition is specified in 456 CMR 14.02(2) and 14.03(2). An individual employee has no right to file a CAS petition. 456 CMR 14.04(2). Any CAS petition found to raise a question of representation must be dismissed and the question of representation addressed by filing a representation petition.

8.2 Timeliness

CAS petitions that seek to accrete or sever positions that were in existence prior to the execution of a current collective bargaining agreement must be filed during the time for filing unless the other party agrees to waive the contract bar and submit the

issue to the Commission. See Section 1.10.1. However, CAS petitions that seek to accrete or sever newly-created positions from the bargaining unit may be filed at any time. 456 CMR 14.06(1)(b).

8.3 Parties

Normally, the only parties to a CAS petition are the employer and the certified or recognized employee organization. In certain cases, however, involving disputed employee clarification, other employee organizations may have an interest, or claim the same employees sought by the petition. When identified, those employee organizations will be notified immediately and added to the interested parties list. No showing of interest is required.

8.4 Procedure

A party seeking to amend an existing bargaining unit to include or exclude a position must submit a Clarification and Amendment Petition providing the Commission with detailed information about the existing unit and the position sought to be included or excluded. After receiving the CAS petition, the Commission assigns an agent who contacts all interested parties to obtain additional information relevant to the petition and to attempt to resolve any disputes concerning the unit placement of the disputed position(s). Based on the information in the petition and additional information provided to the agent, the Commission decides whether there are disputed issues of fact that would require a hearing. If the Commission determines that a hearing is not needed, the Commission makes its decision about the unit placement of the disputed position(s) based on the information received from the parties.

8.5 Accretion

In deciding whether a position should be accreted into an existing bargaining unit, the Commission determines whether: 1) the disputed position was included in the original certification or recognition; 2) the parties' subsequent conduct, including their collective bargaining agreements, disclose whether the parties treated the position as included in the unit; 3) the position shares a community of interest with other positions in the unit. Town of Somerset, 25 MLC 98, 100 (1999); Hanover School Committee, 24 MLC 83, 87 (1998).

9 Add-On Elections

In limited cases, the Commission may direct self-determination elections to ascertain if certain employees seek to be represented in a larger overall unit. Before directing an add-on election, the Commission considers whether: 1) the petition is accompanied by a sufficient showing of interest; 2) there is a sufficient community of interest between the petitioned-for employees and the employees in the unit to which they would be added; 3) the petition includes all similarly-situated employees; and 4)

the reasons for the original exclusion no longer exist.. Brockton School Committee, 26 MLC 191 (2000). In an add-on election, the question before the voters is whether they wish to be represented by the incumbent representative of an existing unit in that unit.

10 Affiliations

An incumbent employee organization may affiliate or disaffiliate with another employee organization and the employer will be required to continue bargaining with the newly-affiliated organization, provided: 1) the affiliation or disaffiliation does not significantly disrupt the existing bargaining relationship; and 2) the employees that were affected by the affiliation had a full and fair opportunity to choose whether to affiliate or disaffiliate. Belmont School Committee, 9 MLC 1343 (1982). In determining whether the second criteria has been met, the Commission considers the procedures the incumbent labor organization used for accomplishing the affiliation or disaffiliation, including notice to the employees, an opportunity for discussion, an orderly voting process, and a secret ballot.

11 Revocation Of Certification

An incumbent certified bargaining representative may request the Commission to revoke its certification by filing a written request and a statement that the employee organization disclaims all interest in further representing the employees in a bargaining unit 456 CMR 14.16. The petitioning bargaining representative must serve a copy of its request on the employer.

12 Judicial Review of Representation Cases

The Commission has broad discretion in processing representation petitions, and its discretion is generally not subject to judicial review under M.G.L. c. 30A, Section 14. Jordan Marsh v. Labor Relations Commission, 312 Mass. 567, 600-601 (1942); City Manager of Medford v. Labor Relations Commission, 353 Mass. 519, 523-24 (1968); Worcester Industrial Technical Inst. Instructors Assn. Inc. v. Labor Relations Commission, 357 Mass. 118, 120-121 (1970). Sullivan v. Labor Relations Commission, 5 Mass. App. Ct. 532, 535 (1977). The general rule that Commission decisions in representation matters are not judicially reviewable under Chapter 30A is premised on the fact that they are not final decisions in an adjudicatory proceeding within the meaning of Chapter 30A. The courts have recognized three limited exceptions to this general rule: 1) if the Commission exceeds its jurisdiction; 2) if there is an extraordinary circumstance for varying the general rule; or 3) if there is a risk of special injury to the public interest. See, e.g., Local 1111, International Association of Fire Fighters, AFL-CIO v. Labor Relations Commission, 14 Mass. App. Ct. 236, 238 (1982), citing City Manager of Medford at 523-24. Therefore, an employer that wishes to challenge the Commission's decision in a representation case must do so by refusing to

bargain and raising the issue as a defense to a prohibited labor practice charge. See, e.g., Town of Wenham, 44 Mass. App. Ct. 195 (1998).

Glossary

Bargaining Unit - Employees who have a community of interest are included in a group called a bargaining unit for collective bargaining purposes.

Blocking Charge - When a party to a representation case makes a motion to "block" the further processing of a representation case, this is called a blocking charge.

Certification - When an employee organization wins a representation election, the Commission certifies the employee organization as the exclusive collective bargaining representative of the bargaining unit.

Community of Interest - Employees who share common working conditions and interests for the purpose of collectively bargaining.

Consent Agreement - When the parties agree to the scope of the bargaining unit and the election details, the document the parties sign is called a consent agreement.

Decertification - When employees file a petition claiming that the incumbent employee organization no longer has the support of a majority of the employees in the bargaining unit, the Commission conducts an election. If the employee organization loses the election, the Commission revokes the employee organization's certification and the employee organization may no longer act as the exclusive bargaining representative of the bargaining unit.

Disclaimer - When the certified or recognized employee organization writes to the Commission and voluntarily expresses its desire to no longer continue representing the bargaining unit.

"Globe" ballot - The special ballot prepared for professional employees so that they may vote to decide whether to be included in a nonprofessional bargaining unit or in a bargaining unit composed solely of professional employees.

Recognition - Written acceptance by an employer of an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive bargaining of all the employees in such unit for the purpose of collective bargaining.

Showing of Interest - The percentage of employees in a proposed bargaining unit, or a unit deemed to be appropriate, who have designated an employee organization as their exclusive bargaining representative or who have signed a petition seeking decertification of an incumbent employee organization.